IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 16812 of 1999

Between:

Indrapuri Railway Colony Development Society, Rep.by its Secretary, K.Hanumanthu, S/o K.Anjanappa, Retired Railway employee, R/o Plot No.37, Indrapuri Railway Colony, West Maredpalli, Secunderabad.

..... PETITIONER

AND

1. The Executive Officer, Cantonment Board, Secunderabad.
2. Ramasai Builders, Rep.by its Proprietor, Sri R.Ramakrishna Vara Prasad, S/o Rama Rao, R/o Flat No.102, Rekha apartments, Habsiguda, Street No.3, Kakateeyanagar Colony, Hyderabad.
3. Sri B.M.Madanna, S/o Late B.K.Madappa, Plot No.33, Indrapuri Railway Colony, West Maredpally, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ order or direction more in the nature of a writ of "Mandamus" declare the inaction of 1st respondent regarding prevention of erection of multi storied buildings in Indrapuri Railway Colony, Secunderabad inspite of the repeated representations of the petitioner committee, is illegal and consequently direct the 1st respondent to take appropriate action with regard to the construction of multi storied buildings, in Indrapuri Railway Colony, West Marredpally, Secunderabad including the one under construction in Plot NO.33 of the said colony.

Counsel for the Petitioner: SMT.M.BHASKARA LAKSHMI
Counsel for Respondent No.1: MR. DEEPAK BHATTACHARJEE
Counsel for the Respondent No2&3.: MR.B.D.L.NIRMAL KUMAR

The Court made the following :

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.16812 OF 1999

ORDER:

Indrapuri Railway Colony Development Society (for short, the Society) is the petitioner in this writ petition. The said Society seeks a writ of mandamus declaring the action of the first respondent, namely, the Executive Officer, Cantonment Board, in not preventing the erection of multi-storied buildings in Indrapuri Railway Colony in spite of representations, as illegal and contrary to the Cantonment Board Secunderabad Building Bye-laws. The Society also seeks a consequential direction to first respondent to take action against construction of multi-storied buildings.

The Society acquired Acs.8-00 of land in West Maredpally and after obtaining necessary approval for layout vide proceedings dated 30.11.1979, allotted plots to its members. In the layout known as Indrapuri Railway Colony, members of the Society constructed houses and the colony has all basic amenities. When multi-storied buildings started coming up, the petitioner made representations to first respondent alleging that the construction of multi-storied buildings is contrary to the bye-laws framed under Section 186 of the Cantonments Act, 1924 ('the Act', for brevity), in vain and therefore they filed the present writ petition.

They also alleged that the second respondent, who is the builder, is taking steps for constructing multi-storied building on the land owned by the third respondent. The first respondent has filed counter affidavit along with a status report regarding multi-storied buildings being constructed or constructed in the cantonment area. The details of these multi-storied buildings and action taken by the Cantonment Board are given in the counter affidavit.

Insofar as the building constructed by respondents 2 and 3, it is stated that the third respondent was permitted to construct a building on plot No.33. The permission was granted to construct the building consisting of ground floor and second floor with total carpet area of 1,712.75 square feet. However, the plot owner covered the set back areas, open passages and converted them into built-up areas. The ground floor is converted into stilt floor and third floor is totally unauthorized. On detection, it was

found that third respondent constructed 6,552 square feet. A preliminary show cause notice was issued under Section 185 of the Act, dated 12.08.1997 followed by a notice under Section 256 of the Act dated 25.09.1999. The third respondent preferred an appeal under Section 274 of the Act to the Director of Defence Estates, Pune, who dismissed the appeal on 29.03.2000. The third respondent thereafter filed a writ petition being W.P.No.14053 of 2000 and this Court by an order dated 26.04.2002, set aside the order passed by the appellate authority and remanded the matter for *de novo* enquiry into the same. The Cantonment Board was also directed not to demolish the building during the pendency of the appeal.

The submission of the learned counsel for the petitioner that the first respondent failed to discharge statutory duty stands disproved by the various averments made in the counter affidavit. The Cantonment Board has initiated action in accordance with law against the third respondent, which is pending before the appellate authority. It is brought to my notice that the matter was remanded by this Court in April, 2002, but the appellate authority has not yet passed any orders. Therefore, it would be better if the appellate authority dispose of the appeal preferred by the third respondent against the orders of the Cantonment Board dated 25.09.1999 within a period of six weeks from the date of receipt of the order. There shall be an order in the said terms.

The writ petition is accordingly disposed of. No costs.

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(V.V.S.RAO,J)

19.08.2004.

pln

To

1. The Executive Officer, Cantonment Board, Secunderabad.
2. 2 CD copies.

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